

Appl. No. 10/025,059
Docket No. 8819
Amdt. dated March 5, 2007
Reply to Office Action mailed on December 4, 2006
Customer No. 27752

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REMARKS

Claim Status

Claims 1-17 and 19 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 USC §102(b) Over Uitenbroek et al. (US 5,897,541)

Claims 1 and 9-17 have been rejected under 35 USC §102(b) as being anticipated by Uitenbroek et al. (US 5,897,541). This rejection is respectfully traversed.

In order for a reference to anticipate a claim, each and every element of the claim must be found in the reference. M.P.E.P. 2131. The claimed invention has a colored portion and a non-colored portion. In addition, the colored portion has a first shade and a second shade, the first shade being positioned substantially centrally within the second shade. Applicants respectfully submit that the Office Action has failed to show where in Uitenbroek each and every element of the claimed invention can be found. For example, the Office Action has not shown where Uitenbroek discloses a colored portion and a non-colored portion, the colored portion and the non-colored portion being viewable from the viewing surface of the topsheet, the colored portion having a first shade and a second shade, the first shade being positioned substantially centrally within the second shade, the second shade being different from the first shade.

Regarding Claim 1, the Office Action cites to Uitenbroek at Col. 1, lines 63-65 as showing a colored portion and a non-colored portion being viewable from the viewing surface of the topsheet. Col. 1, lines 63-65 of Uitenbroek read as follows:

The laminate material comprises a first layer of material having opaque areas, transparent areas and a coloration.

(emphasis added). Applicants have reviewed the citation, however, and respectfully submit that they do not find where in Col. 1, lines 63-65, Uitenbroek teaches or suggests a colored portion and a non-colored portion being viewable from the viewing surface of the topsheet. Applicants define "non-colored" in the Specification, at, e.g., page 5, lines 25-27, as "colors having an L* value of at least 90, an a* value equal to 0 ± 2 , and a b* value equal to 0 ± 2 ." Uitenbroek teaches, e.g., that the opaque areas of the first layer can be a

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coloration but that the transparent areas are "colorless." Col. 4, lines 53-55. Uitenbroek further defines transparent as follows:

As used herein, the word "transparent" refers to a material through which light readily passes such that written or printed indicia located opposite the transparent material can be viewed by the naked eye.

Col. 2, lines 29-32. The Office Action has not presented any evidence that the laminate of Uitenbroek would meet the definition of "non-colored" as presented by Applicants. As such, the Office Action has not shown where Uitenbroek teaches a colored portion and a non-colored portion, the colored portion and the non-colored portion being viewable from the viewing surface of the topsheet.

Regarding Claim 10, which depends from Claim 1, the Office Action cites to Uitenbroek at Col. 1, lines 48-58 as disclosing an absorbent article wherein the colored portion is an insert positioned between the topsheet and the absorbent core. Applicants have reviewed the citation to Uitenbroek, and respectfully submit that they do not see where in Col. 1, lines 48-58, Uitenbroek teaches or suggests the claimed invention, such as, for example, a colored portion and a non-colored portion, the colored portion and the non-colored portion being viewable from the viewing surface of the topsheet, the colored portion having a first shade and a second shade, the first shade being positioned substantially centrally within the second shade, the second shade being different from the first shade, wherein the colored portion is an insert positioned between the topsheet and the absorbent core.

Regarding Claim 11, which depends from Claim 1, the Office Action cites to Uitenbroek, Col. 1, lines 62-65, as teaching the claimed invention. Applicants have reviewed the citation and respectfully submit that they cannot find where in Col. 1, lines 62-65, Uitenbroek teaches or suggests the claimed invention, such as, for example, a colored portion and a non-colored portion, the colored portion and the non-colored portion being viewable from the viewing surface of the topsheet, the colored portion having a first shade and a second shade, the first shade being positioned substantially centrally within the second shade, the second shade being different from the first shade, wherein the colored portion forms a part of the topsheet.

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Regarding Claim 12, which depends from Claim 1, the Office Action cites to Uitenbroek, Col. 1, lines 62-65, as disclosing a colored portion forming part of the absorbent core whereby the colored portion is viewable from the viewing surface of the topsheet. Col. 1, lines 62-65 of Uitenbroek read as follows: "The bodyside liner comprises a laminate material. The laminate material comprises a first layer of material having opaque areas, transparent areas and a coloration." Applicants have reviewed this portion of Uitenbroek and respectfully submit that they do not see where in this citation there is a teaching or suggestion of the claimed invention, such as, for example, a colored portion and a non-colored portion, the colored portion and the non-colored portion being viewable from the viewing surface of the topsheet, the colored portion having a first shade and a second shade, the first shade being positioned substantially centrally within the second shade, the second shade being different from the first shade, wherein the colored portion forms a part of the absorbent core whereby the colored portion is viewable from the viewing surface of the topsheet.

Regarding Claim 13, which depends from Claim 1, the Office Action cites to Uitenbroek, Col. 1, line 59 to Col. 2, line 5, and Col. 2, lines 51-52. Applicants have reviewed the citations and respectfully submit that they cannot find where in Col. 1, line 59 to Col. 2, line 5, or Col. 2, lines 51-52, Uitenbroek teaches or suggests the claimed invention, such as, for example, a colored portion and a non-colored portion, the colored portion and the non-colored portion being viewable from the viewing surface of the topsheet, the colored portion having a first shade and a second shade, the first shade being positioned substantially centrally within the second shade, the second shade being different from the first shade, wherein the colored portion comprises a multi-layered insert positioned beneath the topsheet.

Regarding Claim 14, which depends from Claim 1, the Office Action cites to Uitenbroek, Col. 1, line 35 to Col. 2, line 5, and Col. 2, lines 51-52. Applicants have reviewed the citations and respectfully submit that they cannot find where in Col. 1, line 35 to Col. 2, line 5, and Col. 2, lines 51-52, Uitenbroek teaches or suggests the claimed invention, such as, for example, a colored portion and a non-colored portion, the colored portion and the non-colored portion being viewable from the viewing surface of the topsheet, the colored portion having a first shade and a second shade, the first shade being positioned substantially centrally within the second shade, the second shade being

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different from the first shade, wherein the colored portion comprises a multi-colored insert positioned beneath the topsheet and comprising at least a first layer and a second layer wherein the first layer comprises one shade of color and wherein the second layer comprises another shade of color.

Regarding Claims 15-17, which depend from Claim 1, the Office Action cites to Uitenbroek at Col. 3, lines 41-55, and Col. 5, lines 1-4. Applicants have reviewed the citations and respectfully submit that they cannot find where in Col. 3, lines 41-55, and Col. 5, lines 1-4, Uitenbroek teaches or suggests the claimed invention, such as, for example, a colored portion and a non-colored portion, the colored portion and the non-colored portion being viewable from the viewing surface of the topsheet, the colored portion having a first shade and a second shade, the first shade being positioned substantially centrally within the second shade, the second shade being different from the first shade, wherein the topsheet comprises a formed firm and/or a nonwoven.

Accordingly, because Uitenbroek fails to disclose each and every element of Claim 1 and its dependent claims 9-17, Applicants respectfully request withdrawal of the 35 USC 102(b) rejection and allowance of the claims.

Rejection Under 35 USC §103(a) Over Uitenbroek et al. (US 5,897,541)

Claims 2-8 and 19 have been rejected under 35 USC §103(a) as being unpatentable over Uitenbroek et al. (US 5,897,541). This rejection is respectfully traversed.

Applicants traverse the rejection because the Office Action has not made a *prima facie* case of obviousness. As discussed above, the Office Action failed to show where Uitenbroek teaches or suggests the claimed invention, including, *e.g.*, a colored portion and a non-colored portion, the colored portion and the non-colored portion being viewable from the viewing surface of the topsheet. In addition, the Office Action has not pointed to any motivation in Uitenbroek to provide an absorbent article having a colored portion and a non-colored portion, where the colored portion is viewable from the viewing surface of the topsheet, and the colored portion has a first shade and a second shade, the first shade being positioned substantially centrally within the second shade, the second shade being different from the first shade. Furthermore, the Office Action is

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basing its arguments on impermissible hindsight and improper use of the teachings of Applicants' own specification. Finally, even assuming Uitenbroek properly could be modified to provide the limitations of Claims 2-8, the claimed invention would not result, as any modification of Uitenbroek fails to include, for example, a colored portion and a non-colored portion, the colored portion and the non-colored portion being viewable from the viewing surface of the topsheet.

Regarding Claim 2, the Office Action cites to Uitenbroek, Col. 1, lines 53-58, as suggesting a modification of Uitenbroek to provide a first shade that is darker than a second shade. Applicants respectfully submit that the Office Action has presented no motivation to modify Uitenbroek to arrive at the claimed invention, and the Office Action is using impermissible hindsight. Furthermore, even if Uitenbroek could be modified in the manner described by the Office Action, the claimed invention would not result.

Regarding Claims 3-7, Applicants respectfully submit that the Office Action has not set forth any evidence regarding the capabilities of the prior art for performing the intended use. Furthermore, the Office Action has not presented any evidence or motivation to modify Uitenbroek to arrive at the claimed invention. Finally, even if Uitenbroek could be modified in the manner described by the Office Action, the claimed invention would not result.

Regarding Claims 8 and 19, the Office Action states that discovering the optimum range of the size of the colored portion in respect to the viewing surface of the topsheet involves only a level of ordinary skill in the art. (Office Action, page 5). Applicants respectfully submit that the Office Action has failed to present any evidence that the size of the colored portion is a "result-effective variable." ("A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation." M.P.E.P. 2114.05). The Office Action has also failed to provide any evidence showing a motivation to optimize the size of the color portion. Even if Uitenbroek could be modified in the manner described by the Office Action, the claimed invention, such as, e.g., a colored portion and a non-colored portion, the colored portion and the non-colored portion being viewable from the viewing surface of the topsheet, would not result.

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Accordingly, because the Office Action fails to make a *prima facie* case of obviousness in accordance with M.P.E.P. 2143, Applicants respectfully request that the rejection be withdrawn and Claims 2-8 and 19 be allowed.

Double Patenting Rejections

Applicants agree to submit all necessary terminal disclaimers upon indication of allowable subject matter.

Conclusion

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application and allowance of Claims 1-17 and 19 are respectfully requested. The Examiner is invited to telephone Applicants' attorney at the number below with any questions or comments.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By

Signature

Amanda T. Barry

Typed or Printed Name
Registration No. 51,435
(513) 634-4160

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